Housing Discrimination and The Fair Housing Act: Two decades of growth or stagnation?

How effective was the fair housing act in addressing housing discrimination in the United States in the 20 years following its passage?

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The Kerner Report once famously warned that "Our Nation is moving toward two societies, one black, one white—separate and unequal".[1] The Fair Housing Act of

[1] National Advisory Commission on Civil Disorders. *Report of the National Advisory Commission on Civil Disorders*. Washington, DC: U.S. Government Printing Office, (1968): 1.

1968 was originally designed to eliminate an issue at the root of civil disorder in America: housing discrimination. Housing discrimination has been a major obstacle for many Americans who were a part of a minority or historically disadvantaged groups over the course of United States history. The issue of housing discrimination was not meaningfully addressed on the federal level until the close of the Civil Rights movement with the final major civil rights legislation of that time period: the Civil Rights Act of 1968. It was within this act that Title VIII, often referred to as the Fair Housing Act of 1968, was enshrined into federal law. Originally built to address the housing inequalities that black Americans faced, it also extended its federal protections to many historically disadvantaged groups. Although revolutionary for its time, the Fair Housing Act was not without its flaws. While the Fair Housing Act had a number of immediate positive impacts in reshaping the experience of several American minority groups, it mainly served as a foundational document that allowed for a legal framework to be expanded upon. Key initial failures and oversights of the Fair Housing Act include the discriminatory practice of real estate steering (sometimes referred to as "racial steering"),[2] and the relatively static Index of Dissimilarity (or levels of segregation).[3] A case study of Chicago's local ordinance designed to fill in the gaps left by the Fair Housing Act demonstrates an example of successful city legislation designed to combat discriminatory housing practices that the federal Fair Housing Act failed to address. Two landmark amendments made to the Fair Housing Act during a two decade period will be examined, including the 1974 Housing and Community Development Act, as well as the 1988 Fair Housing

[2] "Racial Steering: The Real Estate Broker and Title VIII," *The Yale Law Journal* 85, no. 6 (1976): 809.
[3] Denton, Nancy A. "Half Empty or Half Full: Segregation and Segregated Neighborhoods 30 Years After the Fair Housing Act." *Cityscape* 4, no. 3 (1999): 108.

Amendments Act, in order to evaluate the evolution of the act in the two decades subsequent to its initial legislation.

Real estate steering is a key example of a form of housing discrimination left unaddressed by the Fair Housing Act of 1968. Real estate steering is defined by the Yale Law Journal (1976) as a "generic term for a variety of longstanding and ubiquitous practices by which a real estate broker directs buyers toward or away from particular houses or neighborhoods according to the buyer's race".[4] During the years directly subsequent to the civil rights movement, real estate steering was considered a major issue in academic analysis of housing discrimination, with the Tulsa Law Journal (1977) describing the practice as "premised on the notion that the buyer will be either incompatible or unacceptable to the residents of a housing area due to his race, religion or national origin, or that the residents of an area will be unacceptable to that buyer due to racial religious or ethnic differences".[5] Rather than being characterized as an intentional bias, in most cases a subconscious racial bias or a "pervasive broker ideology" lead to a systemic form of housing discrimination based on institutional racism, causing it to be more difficult to be eliminated through federal legislation like the Fair Housing Act.[6] While it could be argued that a prospective property buyer could purchase a dwelling in any place in which they choose, eliminating concerns surrounding of the involvement of a potentially biased broker, housing researchers point out that "While there are other sources of information available to the buyer, a deprivation would result if the prospective purchaser could

[4] "Racial Steering," 809.
[5] Bruce, Neil C. "Real Estate Steering and the Fair Housing Act of 1968." *Tulsa Law Journal* 12 (1977): 760. [6] "Racial Steering," 811.

not tap the expert source of information of the broker".[6] Many similar issues result if the practice of real estate steering is left unchecked, and few avenues exist to check if a broker is real estate steering; that is, other than what is referred to as "testing". Testing in real estate is the practice of determining whether or not a real estate broker is practicing discriminatory real estate steering, through the use of a "tester".[7] Neil C. Bruce of the Tulsa Law Journal describes the process by which the use of a tester within said testing occurs, stating that: "A tester is instrumental in providing proof of a violation by posing as a purchaser with similar, if not the same, criteria for housing and approximately the same personal characteristics as the aggrieved party except for the fact that the tester is of a different race".[9] This method by which testing may occur allowed for an aggrieved party to file a complaint which often eventually resulted in litigation and penalties for the real estate broker. This being one of the few means by which a prospective buyer could combat real estate steering, underscores a key flaw within the original federal Fair Housing Act. Real estate steering made it more difficult for historically disadvantaged and minority Americans to purchase housing based on their specifications, exacerbating issues like institutional segregation.

Proponents of the Fair Housing Act aimed to eliminate segregated housing and major levels of segregation in the nation's cities, and this goal was achieved; to an extent. Although the Fair Housing Act provides legal protections against housing discrimination based on race, it does not eliminate the root issue of systemic segregation. In a landmark government report commissioned by then president Lyndon B. Johnson: The Kerner report, government researchers analyzed the

[6] Bruce, "Real Estate Steering," 762.
[7] Bruce, "Real Estate Steering," 770.
[9] Bruce, "Real Estate Steering," 770.

relationship between segregation and civil disorder, in an attempt to curb escalating riots within American cities. What they found transformed our understanding of discrimination in the United States, and the role housing inequality plays in that issue. Namely, the levels of institutional segregation present in the 12 largest "central cities" like Chicago and New York.[8] Institutional segregation is measured by the "Index of Dissimilarity", which measures the levels of segregation "from 0 (no segregation) to 100 (complete segregation)".[9] Notably, in comparing the rates of segregation based on the Index of Dissimilarity, associate professor of sociology Nancy Denton in her journal article "Half Empty or Half Full: Segregation and Segregated Neighborhoods 30 Years After the Fair Housing Act." highlighted the lack of major shifts in the index score from 1960 to 1980 with only a meager 6.2 point decrease (from 86.2 to 80.1), suggesting a relatively insignificant statistical difference between pre-Fair Housing act segregation levels and decades subsequent.[12] The relatively insignificant statistical decrease likely correlates to the Fair Housing Act's failure to address real estate steering as well as the private seller loophole within the Act. Albeit, the Index of Dissimilarity is only one part of the larger context of the effectiveness of the Fair Housing Act, but it does highlight a major area in which the act failed to make major changes. These shortcomings often needed to be addressed at a local level rather than a federal level to make significant progress towards eliminating housing discrimination.

While ineffective by most other metrics, the Fair Housing Act did have positive impacts within the city of Chicago. The most clear example of the effectiveness of the

[8] National Advisory Commission on Civil Disorders, *Report*, 118.
[9] Denton, "Half Empty or Half Full," 108. [12]
Denton, "Half Empty or Half Full," 109.

Fair Housing Act within Chicago was not the Act itself, but the city ordinance it inspired. The 1968 "Chicago Fair Housing Ordinance" was designed specifically as a supplemental local law built to address the loopholes within the federal Fair Housing Act, and to increase penalties surrounding housing discrimination while bolstering the Division of Housing's (a division of the Chicago Commission on Human Relations) jurisdiction and purview surrounding housing discrimination. The ordinance itself was described as "exceeding the legal requirements of the 1968 federal housing law" , this law being the Fair Housing Act.[10] While identical in their protected groups, the Chicago Fair Housing Ordinance includes some key distinctions between itself and the Federal Fair Housing Act. One such example includes the "fine up to $500 on homeowners, building management firms, land-lords, lessors and sublessors found guilty of housing discrimination".[11] This major fine (equivalent to $4,650 USD as of 2026) correlates housing discrimination to a tangible penalty for most all possible types of housing sellers, while also enforcing liability of housing discrimination to sub-lessors, a major loophole within the original Fair Housing Act. Another key example of this ordinance filling a gap in the federal Fair Housing Act is the section within the 1968 Annual report that states "the newly amended law [was applied] to all persons selling or leasing residential property" which directly addresses the private seller loophole that allowed private sellers to easily circumvent anti-housing discrimination laws like the federal Fair Housing Act.[12] Evaluating the immediate effectiveness of the new ordinance is difficult, but numerical data provided in the

[10] Chicago Commission on Human Relations, *1968 Annual Report* (Chicago: City of Chicago, 1969), 3-4.
[11] Chicago Commission on Human Relations, *1968 Annual Report*, 4.
[12] Chicago Commission on Human Relations, *1968 Annual Report*, 4. [16]
Chicago Commission on Human Relations, *1968 Annual Report*, 4.

1968 annual report highlights a direct effect of the new ordinance. According to the report, "Prior to the amended ordinance approximately 22% of the 569 complaints received [in the 1968 calendar year] by the housing division were dismissed due to lack of jurisdiction because they were lodged against private owners and sellers" which statistically proved a major immediate effect of the ordinance.[16] Further, if the statistics of housing complaints from the Chicago Commission on Human Relations annual report in 1968 and 1980 are compared, within the relatively small 12 year time period housing complaints received by the "Division of Housing and Community Services" fell from 185 housing related complaints in 1968[13] down to 120 complaints in 1980.[14] The Chicago Fair Housing ordinance serves as a vital case study in how state and city level legislation can be leveraged in order to fill in the gaps left by federal legislation.

The Fair Housing Act began as a relatively inadequate piece of legislation that failed to offer federal protections against housing discrimination except for a select few categories of Americans. In the original 1968 Fair Housing Act, only the categories of race, color, religion, and national origin as the only categories of Americans protected under the purview of the Fair Housing Act, and by extension, provided with legal protections against housing discrimination.[19] This alongside the failure to address the one half of Americans unaccounted for by the Fair Housing Act, namely women, led there to be a lack of meaningful federal protections for many Americans against housing discrimination. This in addition to several other massive oversights including the failure to prevent discrimination based on familial status and

[13] Chicago Commission on Human Relations, *1968 Annual Report*, 4.
[14] Chicago Commission on Human Relations, *1980 Annual Report* (Chicago: City of Chicago, 1981), 3.
[19] Fair Housing Act, 42 U.S.C. §§ Section 804 (1968).

disability present in the original federal Fair Housing Act of 1968, is reflective of the temperate climate present in the country in the years following the Civil Rights movement. Thankfully, these flaws did not remain forever unaddressed, as the first major amendment to the Fair Housing Act of 1968 was included in the Housing and Community Development Act of 1974. The Housing and Community Development Act specifically amends sub-sections a, b, c, d, and e within section 804 of the Fair Housing Act, to specifically "inserting a comma and the word 'sex' immediately after the word 'religion'".[15] This amendment functionally doubled the number of Americans protected by the Fair Housing Act, being arguably the most impactful amendment to it. The second and less impactful but no less important amendment to the Fair Housing Act was the Fair Housing Amendments Act of 1988. This act expanded the protections present in the Fair Housing Act of 1968 by specifically "inserting "handicap, familial status," immediately after "sex," each place it appears".[21] Overall through both of these amendments, the initially lackluster Fair Housing Act was expanded immensely to include sex, familial status, and disability in just the two decades subsequent to its passage.

In spite of the Fair Housing Act's numerous flaws, the groundwork it laid for future expansions in protections against housing discrimination is undeniable. Even with the relatively inadequate protections it initially included, the later revisions proved effective in addressing some of the most pressing issues. This alongside the case study of Chicago paints a more in-depth picture of the level of legal protections at both a federal and local level against housing discrimination between the period of

[15] Housing and Community Development Act, 42 U.S.C. §§ Section 808 (1974). [21]
Fair Housing Amendments Act, 42 U.S.C. §§ Section 6 (1988).

1968-1988. From a legal standpoint, the Fair Housing Act was relatively effective in addressing the big-picture problems of housing discrimination; alternately, from a nuanced prospective, a number of significant factors prevents the Fair Housing Act from being considered entirely effective in the two decades following its enactment, more accurately described as a federal response that lacked the necessary nuance to be successful on a national scale.

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